

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

TRANSCRIPT OF ARRAIGNMENT AND DETENTION HEARING  
BEFORE THE HONORABLE JILL A. MORRIS  
UNITED STATES MAGISTRATE JUDGE

For the Plaintiff: Ms. Emily A. Morgan  
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Court Audio Operator: Ms. Joella Baldwin

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

(Court in Session at 8:59 a.m.)

THE COURT: Thank you. Good morning. Please be seated. Good morning. We're here on case 20-mj-107-JTM, *United States of America vs. Brian Pontalion*. May I please have appearances?

MS. MORGAN: Emily Morgan on behalf of the United States, Your Honor.

THE COURT: Good morning, Ms. Morgan.

MS. MORGAN: Morning, Judge.

MS. HOLLOMAN-HUGHES: Good morning. Ronna Holloman-Hughes on behalf of Mr. Pontalion, who appears in custody.

THE COURT: Yes. Good morning, Ms. Holloman-Hughes. Good morning, Mr. Pontalion. Sir, in this proceeding, I'll be advising you of the charges against you and of your constitutional rights. These rights do include your right to counsel and your right to remain silent. You are entitled to an attorney in this case, and you may consult with that attorney and be represented in all stages of the proceedings, both inside and outside of court. Your attorney may also be present during any questioning by authorities. You do have the right to retain counsel of your own choosing. If you cannot afford an attorney, the court will appoint one for you. Sir, do you understand your right to an attorney?

MR. PONTALION: Yes.

THE COURT: Okay. And we have the Federal Public Defender's Office, Ms. Holloman-Hughes here, I believe, on

1 standby. Is that correct?

2 MS. HOLLOMAN-HUGHES: I believe the Court asked us to be  
3 here and has or will be appointing us to the --

4 THE COURT: Yes, yes. And, sir, are you wanting the  
5 Court to appoint counsel for you?

6 MR. PONTALION: Not by -- I've already got counsel  
7 appointed.

8 THE COURT: I'm sorry?

9 MR. PONTALION: No. Not by -- I've already have counsel  
10 appointed.

11 MS. HOLLOMAN-HUGHES: He doesn't understand that I have  
12 not been appointed yet.

13 THE COURT: Okay. Okay.

14 MS. HOLLOMAN-HUGHES: So, he's asking -- yes.

15 MR. PONTALION: Okay. Yes.

16 THE COURT: Okay. Thank you. I will appointing the  
17 Federal Public Defender's Office then, and again, for the record,  
18 we do have Ms. Holloman-Hughes here to represent you today.  
19 Thank you. Your counsel will assist you in filling out that  
20 financial affidavit that I mentioned the other day, and it will  
21 be filed with the court under penalty of perjury. So, it's  
22 important that you're honest on that form. Sir, you also have  
23 the right to remain silent. You're not required to make any  
24 statement. If you have made a statement, you're not required to  
25 say any more. If you start making a statement, you may stop at

1 any time. You may also consult with an attorney before any  
2 questioning and have an attorney present with you during any  
3 questioning. Please know that if you make a statement, it may be  
4 used against you. Do you understand you have the right to remain  
5 silent?

6 MR. PONTALION: Yes, ma'am.

7 THE COURT: Thank you. So, a Complaint has been filed  
8 against you here in the Western District of Missouri charging you  
9 with one count of possession with intent to distribute  
10 methamphetamine. Ms. Morgan, could you please read the Complaint  
11 and the range of punishment?

12 MS. MORGAN: Yes, Your Honor. Count One alleges on or  
13 about August 26<sup>th</sup>, 2020, in the Western District of Missouri, the  
14 defendant, Brian Pontalio, did knowingly and intentionally  
15 possess with the intent to distribute 50 grams or more of a  
16 mixture or substance containing a detectable amount of  
17 methamphetamine, contrary to the provisions of Title 21, United  
18 States Code, Section 841(a)(1) and (b)(1)(B). The penalties are  
19 not less than five years imprisonment, not more than 40 years  
20 imprisonment, not more than a \$5 million fine, not less than four  
21 years supervised release. It is a Class B felony, and there is a  
22 \$100 mandatory special assessment.

23 THE COURT: Sir, do you understand the charges you face?

24 MR. PONTALION: Yes, Your Honor.

25 THE COURT: Okay. And since you were charged by way of

1 a Criminal Complaint, you do have the right to the preliminary  
2 hearing today where this Court will determine whether or not  
3 there's probable cause that a crime was committed -- whether  
4 there's probable cause to believe that a crime was committed and  
5 that you committed that crime. Counsel, are there any  
6 stipulations?

7 MS. MORGAN: Yes, Your Honor. The Government would  
8 offer to stipulate that, if called to testify and placed under  
9 oath, Detective Massey would testify consistent with the  
10 Affidavit that was attached to and sworn to by Detective Sipple  
11 for the Complaint.

12 MS. HOLLOMAN-HUGHES: We agree to enter into that  
13 stipulation, Your Honor.

14 THE COURT: Okay. Thank you. Ms. Holloman-Hughes, do  
15 you anticipate cross-examining the detective who's here on behalf  
16 of the affiant?

17 MS. HOLLOMAN-HUGHES: No, Your Honor.

18 THE COURT: Okay. Any further proffers or evidence from  
19 the Government?

20 MS. MORGAN: No, Your Honor.

21 THE COURT: Just as to probable cause?

22 MS. MORGAN: No, Your Honor. Thank you.

23 THE COURT: Okay. Ms. Holloman-Hughes, any evidentiary  
24 proffers or evidence as to the probable cause determination?

25 MS. HOLLOMAN-HUGHES: No, Your Honor.

1 THE COURT: Okay. I'll entertain argument on that issue  
2 for the preliminary portion now.

3 MS. MORGAN: Your Honor, just briefly. Two things we  
4 have to prove, that a crime was committed and that it was  
5 committed by this defendant, and based upon the stipulations of  
6 the parties with regard to the Affidavit, we would argue that  
7 there is probable cause to show that Brian Pontalio committed  
8 this offense of possession with intent to distribute  
9 methamphetamine.

10 THE COURT: Okay. Ms. Holloman-Hughes?

11 MS. HOLLOMAN-HUGHES: No argument, Your Honor.

12 THE COURT: Okay. Taking into account the evidence, the  
13 stipulated evidence and proffer and the information presented  
14 today, the Court does find that probable cause has, in fact, been  
15 established to believe there's a fair probability that the  
16 charged offense was committed, and that this defendant committed  
17 it. We'll now move on to the detention portion of this hearing.  
18 I do have the Complaint, as well as the Pretrial Services Report,  
19 which was filed August 28<sup>th</sup>, and the report was prepared by Tanis  
20 Humig. Have both parties received a copy of the report and had  
21 an opportunity to review it?

22 MS. MORGAN: Yes, Your Honor.

23 MS. HOLLOMAN-HUGHES: Yes, Your Honor.

24 THE COURT: Do either of you have any corrections or  
25 additions to the report?

1 MS. MORGAN: No corrections, Your Honor, and we would  
2 offer to stipulate to the report.

3 MS. HOLLOMAN-HUGHES: No corrections, and we would enter  
4 into that stipulation.

5 THE COURT: Okay. And would the parties also -- okay.  
6 You stipulated to it. So, any objections to entering it into  
7 evidence, just solely for the limited purposes of the detention  
8 determination and limited to the scope of recipients of this  
9 report otherwise?

10 MS. MORGAN: No, Your Honor. Thank you.

11 MS. HOLLOMAN-HUGHES: Not for the defense.

12 THE COURT: Okay. So admitted with those conditions and  
13 limited purpose. Any other evidence as to the Government's  
14 motion to detain here, Ms. Morgan?

15 MS. MORGAN: No, Your Honor. Thank you.

16 THE COURT: Okay. Any evidence, Ms. Holloman-Hughes, as  
17 to detention or release?

18 MS. HOLLOMAN-HUGHES: No, Your Honor.

19 THE COURT: Okay. Ms. Morgan, any argument as to  
20 detention?

21 MS. MORGAN: Yes, Your Honor, just briefly. This is a  
22 rebuttable presumption case. This is an offense where the  
23 maximum penalty is more than ten years. And in this instance, we  
24 are concerned with both the danger that this defendant presents  
25 to the community, as well as the flight risk. We do have the

1 nature and circumstances of this offense. We do have this  
2 defendant's criminal history. And then also the facts and  
3 circumstances of this particular offense present both a danger to  
4 the community and a flight risk. And what I'm alluding to in the  
5 facts and circumstances, not just the offense itself, but the  
6 defendant's driving behavior. We first had his erratic driving  
7 behavior through downtown before an actual pursuit was occurring.  
8 Then there was the car chase when law enforcement was attempting  
9 to stop him. The defendant hit a police car during that. He  
10 then hit a light pole. And then ultimately, when his car was  
11 stop, he tried to flee on foot. So, for all those reasons, we do  
12 not believe there is a single condition or combination of  
13 conditions that would both ensure the safety of the community and  
14 ensure this defendant's appearance at future hearings.

15 THE COURT: Ms. Holloman-Hughes, argument as to  
16 detention/release?

17 MS. HOLLOMAN-HUGHES: Your Honor, unfortunately, this  
18 young man, I don't think, has a placement that he can go, and he  
19 has a case pending in Clay County that, where, likely than not,  
20 they will issue a warrant on. My intent is, because he is so  
21 young, he is 19. He is maybe 120 pounds soaking wet. I think,  
22 you know, of course, the safety of the community is very  
23 important, but the fact that he has a serious substance abuse  
24 problem is an issue. And my hope is that I can find a placement  
25 that would be suitable for this Court and for Clay County to



1 place him during the pendency of both of these causes. But at  
2 this time, I don't have that, and I plan to revisit that when I  
3 do find a suitable placement.

4 THE COURT: Thank you, Counsel. Anything further before  
5 I make a determination on the Government's motion to detain?

6 MS. MORGAN: Not for the Government. Thank you.

7 MS. HOLLOMAN-HUGHES: No, Your Honor.

8 THE COURT: Okay. The Court does note the defendant's  
9 age and has grave concerns with the nature of the underlying  
10 Complaint brought here. And the Court also notes that Mr.  
11 Pontalion was on bond when this event happened and was alleged to  
12 have happened and the number of other offenses were alleged to  
13 have happened. The Court also notes the defendant fleeing, and  
14 you know, not only hitting a police car but also a subsequent  
15 collision, I believe, with a light pole, and takes note of the  
16 pending matter involving assault and armed criminal action, as  
17 well as the extensive criminal history. Given it's a rebuttable  
18 presumption case, there has not been sufficient evidence to  
19 overcome that presumption, and the Court would further find that  
20 it's been established by a preponderance of the evidence that  
21 this defendant poses a risk of non-appearance, given lack of ties  
22 and questionable employment history, extensive substance abuse  
23 history, evading law enforcement in a couple instances now and  
24 the other pending state matters. And the Court further finds  
25 that it's been established by clear and convincing evidence that

1 Mr. Pontalio poses a danger to the community and notes, in light  
2 of the nature and circumstances of the instant offense, I've  
3 already spoken to the substance abuse history, prior adjustment  
4 to community supervision was poor, the underlying offenses  
5 involving violence and drugs and criminal activity while under  
6 supervision, as well as the pending bond and all of those  
7 important factors, finds that it is necessary here to detain the  
8 defendant, and that there's no condition or combination of  
9 conditions that would ensure the safety of the community or the  
10 appearance of the defendant. Again, the Court does note the  
11 defendant's age and would be open to a request at some point, if  
12 a suitable placement would be proposed. The Court would want to  
13 hear from all parties on that, as well as from Pretrial Services.  
14 But this is a juncture at which one has an important decision to  
15 make to turn around one's life. And this is an important  
16 juncture. So, the Court sincerely hopes that this can be a  
17 turning point. Is there anything further that needs to be  
18 addressed for this proceeding?

19 MS. MORGAN: No, Your Honor. Thank you.

20 THE COURT: Okay.

21 MS. HOLLOMAN-HUGHES: Not for the defense. Thank you.

22 THE COURT: Okay. Thank you. This proceeding is  
23 concluded. Court is in recess. Is there anything further I  
24 needed to set?

25 MS. BALDWIN: No.

1 THE COURT: Okay.

2 (Court Adjourned at 9:12 a.m.)

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5 I certify that the foregoing is a correct transcript  
6 from the electronic sound recording of the proceeding in the  
7 above-entitled matter.

8  
9 /s/ Lissa C. Whittaker  
Signature of transcriber

October 29, 2020  
Date